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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/618,635 | 07/15/2003 | Klaus R. Moeller | 23390-000120/US | 5657 |

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| EXAMINER | |
|---|---|
| FAULK, DEVONA E | |
| **ART UNIT** | **PAPER NUMBER** |
| 2644 | |

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/618,635 | MOELLER ET AL. | |
| | Examiner | Art Unit | |
| | Devona E. Faulk | 2644 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *10 January 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *9/7/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 1/10/2005, with respect to the double patent rejection, have been fully considered but they are not persuasive. The applicant asserts, on page 14, that the present invention as defined by independent claims 1,15 and 19 comprises a networked sound masking system in which the sound masking signal is generated at a central location and that this is not the same as the networked sound masking systems being claimed in the co-pending patent application 10/646734 and 09791,802. The examiner asserts that double patent rejection is related to the claim language and that claims 1 of 10/618635 is broader than claim 1 of 10/646,734 and that anything that reads on the narrower claim 1 of 10/646734 will read on claim 1 of 10/618635. Dependent claims 2--14 of 10/618635 recite similar claim language of claims 2-4,10-14,16,18-20 of 10/646,734. The examiner is maintaining the double patent rejection.

2. Applicant's arguments filed 1/10/2005, with respect to the rejection(s) of claim(s) 1-22 under 102 (a) and 103 (b) have been fully considered and are persuasive. The assertion that the examiner agreed with was the applicant's assertion, on page 12, that Ritter did not disclose a control unit that produced the masking signal as well as selectively controlled the operation of the sound masking units. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Orfield.

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7,12,13,18,19,21-28 of copending Application No. 10/646734. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a sound masking system and a networked sound masking system. Claims 1-22 are overall broader than claims 1-7,12,13,18,19,21-28 and anything that would read on the narrower claims would read on the broader claims of application 09/618635

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 10-12,17,21 of copending Application No. 09/791802. Although the conflicting claims are not

identical, they are not patentably distinct from each other because both applications claim a sound masking system and a networked sound masking system. Claims 1-22 are overall narrower than claims 1-7,10-12,17,21 and anything that would read on the narrower claims would read on the broader claims of application 10/618635.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

4. following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 1** is rejected under 35 U.S.C. 102(b) as being anticipated by Orfield (US 4,319,088).

Regarding **claim 1**, Orfield discloses a sound masking system for controlling the ambient noise level in a physical environment, said sound masking system comprising:

a communication network spanning at least a portion of said physical environment (Figure 3) (communication is defined as the exchange of thoughts, messages, or information as by speech, signals, writing or behavior; network is defined as a group of system of electric components and connecting circuitry designed to function in a specific manner);

a plurality of sound masking units (16, Figure 3; column 4, lines 36-40), some of said sound masking units including a communication interface (jacks 70, 71) for coupling said sound masking units to said communication network for receiving signals over said communication network (column 4, lines 42-50);

a control unit (14), said control unit having a communication interface (interconnect cable ,18) for coupling said control unit to said communication network for transmitting signals over said communication network to said sound masking units, and said signals including control signals for selectively controlling the operation of said sound masking units and one or more sound masking signals for producing a sound masking output at one or more of said selected sound masking units (column 4, lines 38-40; Figure 1).

***Claim Rejections - 35 USC § 103***

6. following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Orfield (US 4,319,088) in view of Ritter (US 4,686,693).

**Claim 2** claims the sound masking system of claim 1, wherein said communication interface comprises an address component for recognizing signals intended for the sound masking unit associated with said address component (column 8, lines 32-46). Orfield meets all elements of claim 1 and further teaches that the

master unit that can supply a paging signal as well (column 3, line 42-43) but fails to teach of an address component for recognizing signals intended for sound masking as claimed. Ritter discloses a sound masking apparatus wherein said communication interface comprises an address component for recognizing signals intended for the sound masking unit associated with said address component (column 8, lines 32-46). It would have been obvious to modify Orfield to include an address component as taught by Ritter in order to detect and amplify signals at individual units.

. All elements of **claim 3** are comprehended by the rejection of claim 2. Ritter discloses wherein said control unit includes an address generator for assigning addresses to said sound masking units (column 8, lines 32-46).

All elements of **claim 4** are comprehended by the rejection of claim 3.

All elements of **claim 5** are comprehended by the rejection of claim 1. Ritter discloses a computer (controller , 100) and a control unit as claimed. (column 5, lines 45-63).

All elements of **claim 6** are comprehended by the rejection of claim 5.

**Claim 7** claims the sound masking system of claim 6, wherein said computer includes a component for receiving sound level readings for the physical environment and a component for generating an equalizer adjustment signal derived from said sound level readings, and said control unit being responsive to said equalizer adjustment signal for generating spectral signal control. Orfield as modified by Ritter meets all elements of claim 6. Regarding **claim 7**, Ritter discloses wherein said computer (remote controller) includes a component (sound level meter,104; column 7, lines 10-

16) for receiving sound level readings for the physical environment and a component for receiving sound level readings for the physical environment and a component for generating an equalizer adjustment signal derived from said sound level readings, and said control unit being responsive to said equalizer adjustment signal for generating said spectral control signal (column 7, lines 11-17; column 8, lines 5-12).

All elements of **claim 9** are comprehended by the rejection of claim 1. Orfield teaches of a control unit. Ritter discloses a computer as the control unit (Ritter discloses a computer (controller , 100) as the control unit as claimed. (column 5, lines 45-63).

All elements of **claim 10** are comprehended by the rejection of claim 9.

Regarding **claim 11**, Ritter discloses a sound-masking module for generating one or more of said sound masking signals for transmission to selected ones of said sound masking units (Figure 5; column 7, line 56-column 8, line 4).

Regarding **claim 12**, Orfield discloses a paging component but fails to discloses that the paging component comprises a plurality of input ports for receiving a plurality of paging signals, and a selector coupled to said input ports for selecting one or more of said paging signals and a routing component for routing said selected paging signals over said communication network and one or more of said sound masking units inputting one of said selected paging signals for announcement in response to a control command received from said control unit. Ritter discloses a paging component as claimed (Figure 6; column 8, lines 26-52).

All elements of **claim 13** are comprehended by the rejection of claim 12.

All elements of **claim 14** are comprehended by the rejection of claim 2.

8. Regarding **claim 15**, Orfield discloses a sound masking system for controlling the ambient noise level in a physical environment, said sound masking system comprising:

a communication network spanning at least a portion of said physical environment (Figure 3) (communication is defined as the exchange of thoughts, messages, or information as by speech, signals, writing or behavior; network is defined as a group of system of electric components and connecting circuitry designed to function in a specific manner);

a plurality of sound masking units (16, Figure 3; column 4, lines 36-40), some of said sound masking units including a communication interface (jacks 70, 71) for coupling said sound masking units to said communication network for receiving signals over said communication network (column 4, lines 42-50);

a control unit (14), said control unit having a communication interface (interconnect cable ,18) for coupling said control unit to said communication network for transmitting signals over said communication network to said sound masking units, and said signals including control signals and at least one audio signal, said audio signal comprising a sound masking signal, a paging signal or the sound masking signal mixed with the paging signal (column 4, lines 38-40; Figure 1; (column 4, lines 50-53; column 6, lines 7-10);

wherein said sound masking unit includes an equalizer (76,78) for receiving said audio signal and generating an audio output signal with a predetermined contour, and

said programmable controller including a component for altering the contour of said audio signal in response to a control signal from said control unit (14, master unit) (Figure 1; column 3, lines 23-32 and 55-66), and said programmable controller including a component for altering the contour of said audio output signal in response to a control signal from said control unit (Figure 1; column 3, lines 23-32 and 55-66).

Orfield teaches of the master unit having an amplifier but fails to teach of the slave unit having an amplifier. It is well known in the art to use an amplifier to amplify sound. Ritter teaches of a masking apparatus including an amplifier (70, Figure 1). It would have been obvious to modify Orfield to include an amplifier in the sound-masking unit in order to provide an amplified output.

All elements of **claim 16** are comprehended by the rejection of claim 15.

All elements of **claim 17** are comprehended by the rejection of claim 16.

All elements of **claim 18** are comprehended by the rejection of claim 17.

9. Regarding **claim 19**, Orfield discloses a networked sound masking comprising:

a communication network spanning at least a portion of said physical environment (Figure 3) (communication is defined as the exchange of thoughts, messages, or information as by speech, signals, writing or behavior; network is defined as a group of system of electric components and connecting circuitry designed to function in a specific manner);

a plurality of sound masking units (16, Figure 3; column 4, lines 36-40), some of said sound masking units including a communication interface (jacks 70, 71), at least some o0f said sound masking units including a communication interface for coupling to

said communication network and a speaker, said communication interface having an address component for recognizing control signals and an audio signal for announcement at said speaker associated with said address component, said audio signal comprising a sound masking signal, or a paging signal mixed with said sound masking signal (column 4, lines 42-50);

a control unit (14), having a communication interface (interconnect cable ,18) for coupling said control unit to said communication network for transmitting signals over said communication network to said sound masking units associated with said address component, and said signals including one or more of said audio signals and control signals for selectively controlling the operation of said sound masking units (column 4, lines 38-40; Figure 1).

Orfield fails to teach of said control unit including an address generator for assigning addresses to said sound masking units. Ritter discloses a sound masking apparatus wherein said communication interface comprises an address component for recognizing signals intended for the sound masking unit associated with said address component (column 8, lines 32-46). It would have been obvious to modify Orfield to include an address component as taught by Ritter in order to detect and amplify signals at individual units.

All elements of **claim 20** are comprehended by the rejection of claim 19.

All elements of **claim 21** are comprehended by the rejection of claim 20 (column 8, lines 26-32).

All elements of **claim 22** are comprehended by the rejection of claim 21 (column 8, lines 26-32).

***Claim Objections***

10. Claim 22 is objected to because of the following informalities: Claim 22 recites "the networked sound masking system as claimed in claim 21" but claim 21 recites "the networked sound masking system". Appropriate correction is required.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 571-272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

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